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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WASTE ACTION PROJECT,	)	
	)	
Plaintiff,	)	
v.	)	COMPLAINT
	)	
DOUBLE H. SLAUGHTERING, INC. dba	)	
THE BEEF SHOP, and FIVE STAR	)	
BEEF,	)	
	)	
Defendant.	)	
	)	
	)	

**I. INTRODUCTION**

1. This action is a citizen suit brought under Section 505 of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA") as amended, 33 U.S.C. § 1365. Plaintiff Waste Action Project seeks a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys' and expert witnesses' fees, for Defendants Double H. Slaughtering, Inc. dba the Beef Shop's and Five Star Beef's repeated and ongoing violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and the terms and conditions of the National Pollutant Discharge Elimination System

1 (“NPDES”) permit authorizing discharges of pollutants from Defendants’ Centralia, Washington,  
2 facility to navigable waters.

## 3 II. JURISDICTION AND VENUE

4 2. The Court has subject matter jurisdiction under Section 505(a) of the CWA, 33  
5 U.S.C. § 1365(a). The relief requested herein is authorized by 33 U.S.C. §§ 1319(d) and  
6 1365(a).  
7

8 3. Under Section 505 (b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), Plaintiff  
9 notified Defendants of Defendants’ violations of the CWA and of Plaintiff’s intent to sue under  
10 the CWA by letter dated April 13, 2012 (“Notice Letter”). A copy of the Notice Letter is  
11 attached to this complaint as Exhibit 1. The allegations in sections I, II, III, IV, V, VI, VII, and  
12 VIII of the Notice Letter are incorporated herein by this reference. Plaintiff notified the  
13 Defendants’ registered agent, the Administrator of the United States Environmental Protection  
14 Agency (“USEPA”), the Administrator of USEPA Region 10, and the Director of the  
15 Washington Department of Ecology (“WDOE”) of its intent to sue Defendants by mailing copies  
16 of the Notice Letter to these officials on April 13, 2012.  
17

18 4. More than sixty days have passed since the notice was served and the violations  
19 complained of in the Notice Letter are continuing or are reasonably likely to continue to occur.  
20 Defendants are in violation of the NPDES permit and the CWA. Neither the USEPA nor the  
21 WDOE has commenced any action constituting diligent prosecution to redress these violations.  
22

23 5. The source of the violations complained of is located in Lewis County,  
24 Washington, within the Western District of Washington, and venue is therefore appropriate in  
25 the Western District of Washington pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. §  
26 1365(c)(1).  
27  
28

### III. PARTIES

6. Plaintiff, Waste Action Project, is suing on behalf of itself and its member(s).

Waste Action Project is a non-profit corporation organized under the laws of the State of Washington. Waste Action Project is a membership organization and has at least one member who is injured by Defendants' violations. Waste Action Project is dedicated to protecting and preserving the environment of Washington State, especially the quality of its waters.

7. Plaintiff has representational standing to bring this action. Waste Action Project's members are reasonably concerned about the effects discharges from Defendants' facility on aquatic species and wildlife that Plaintiff's members observe and enjoy. The recreational, economic, aesthetic and/or health interests of Waste Action Project and its member(s) have been, are being, and will be adversely affected by Defendants' violations of the CWA. The relief sought in this lawsuit can redress the injuries to these interests.

8. Plaintiff has organizational standing to bring this action. Plaintiff has been actively engaged in advocacy efforts to improve water quality and to address sources of water quality degradation in the waters within the state. Defendants have failed to fulfill monitoring, recordkeeping, reporting and planning requirements, among others, necessary for compliance with the NPDES permit and the CWA. As a result, Plaintiff is deprived of information necessary to properly serve its members by providing information and taking appropriate action, and Plaintiff's efforts to advocate for greater environmental protection for the benefit of its members are precluded. Thus, Plaintiff's organizational interests have been adversely affected by Defendants' violations. These injuries are fairly traceable to Defendants' violations and redressable by the Court.

1           9. Defendants own and operate a facility used for animal slaughtering and  
2 processing. Defendants' facility is located at or about 1721 Airport Road, Centralia, Washington  
3 98531 (the "facility").

#### 4                           **IV. LEGAL & FACTUAL BACKGROUND**

5           10. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of  
6 pollutants by any person, unless in compliance with the provisions of the CWA. Section 301(a)  
7 prohibits, among other things, such discharges not authorized by, or in violation of, the terms of  
8 a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

9           11. The State of Washington has established a federally approved state NPDES  
10 program administered by the WDOE. Wash. Rev. Code § 90.48.260; Wash. Admin. Code ch.  
11 173-220. This program was approved by the Administrator of the USEPA pursuant to 33 U.S.C.  
12 § 1342(b).

13           12. Pursuant to Section 402(a) of the CWA, 33 U.S.C. § 1342(a), the WDOE has  
14 repeatedly issued the Industrial Stormwater General Permit, most recently on October 21, 2009,  
15 (the "General Permit"). The General Permit, in its various iterations since its first issuance in  
16 1993 containing comparable requirements, authorizes those that obtain coverage under the  
17 General Permit to discharge stormwater, a pollutant under the CWA, and other pollutants  
18 contained in the stormwater to the waters of the State subject to certain terms and conditions.

19           13. The General Permit imposes certain terms and conditions on those covered  
20 thereby, including monitoring and sampling of discharges and reporting and recordkeeping  
21 requirements. To reduce and eliminate pollutant concentrations in stormwater discharges, the  
22 General Permit requires, among other things, that Permittees develop and implement best  
23 management practices ("BMPs") and a Stormwater Pollution Prevention Plan ("SWPPP"), and

1 apply all known and reasonable methods of prevention, control, and treatment (“AKART”) to  
2 discharges.

3 14. WDOE has authorized discharges from Defendants’ facility pursuant to the  
4 General Permit as Permit Number WAR012015.

5 15. Defendants’ facility is engaged in industrial activity and discharges stormwater  
6 and other pollutants to Chehalis River.

7 16. Discharges from Defendants’ facility contribute to the polluted conditions of the  
8 waters of the State. The Chehalis River does not meet water quality standards for turbidity, fecal  
9 coliform, and other pollutants, and is included on the state’s “303(d) list” of impaired water  
10 bodies. Discharges from Defendant’s facility contribute to the ecological impacts that result  
11 from the polluted state of these waters and to Plaintiff’s and its members’ injuries resulting  
12 therefrom.

13 17. The vicinity of the facility and the receiving waters are used by the citizens of  
14 Washington and visitors, as well as at least one of Plaintiff’s members, for recreational activities,  
15 including boating, biking, fishing and nature watching. Plaintiff’s member(s) also derive(s)  
16 aesthetic benefits from the receiving waters. Plaintiff’s and its members’ enjoyment of these  
17 activities and waters is diminished by the polluted state of the receiving waters and by  
18 Defendant’s contributions to such polluted state.

19 18. Defendants have violated the General Permit and Sections 301(a) and 402 of the  
20 CWA, 33 U.S.C. §§ 1311(a) and 1342, by discharging pollutants in violation of an NPDES  
21 Permit. Defendants’ violations of the General Permit and the CWA are described in detail in  
22 sections I, II, III, IV, V, VI, VII, and VIII of the Notice Letter, attached hereto as Exhibit 1, and  
23 are incorporated herein by this reference.

1           19. Defendants have violated the General Permit by failing to provide access to, or a  
2 copy of, its SWPPP to Waste Action Project within 14 days of receipt of Waste Action Project's  
3 written request in section VIII of the Notice Letter, attached hereto as Exhibit 1.

4           20. Defendants have not developed and/or implemented a SWPPP in accordance with  
5 the requirements of the General Permit. Defendants' SWPPP does not specify all of the BMPs  
6 that are necessary to provide AKART and to ensure that discharges do not cause or contribute to  
7 violations of water quality standards. Defendants' SWPPP does not include all of the specific  
8 requirements of the General Permit. These SWPPP requirements and violations are described in  
9 detail in section II of the Notice Letter, attached hereto as Exhibit 1, and are incorporated herein  
10 by this reference.  
11

12           21. Defendants have violated the monitoring requirements in the General Permit.  
13 Defendants have failed to collect stormwater samples and/or submit discharge monitoring reports  
14 during all quarters as required under the General Permit. Defendants failed to collect stormwater  
15 samples and/or to submit DMRs for the following monitoring periods: 1st –4th quarters 2010, 1st  
16 – 4th quarters 2011, and 1st quarter 2012. These monitoring requirements and violations are  
17 described in detail in section III of the Notice Letter, attached hereto as Exhibit 1, and are  
18 incorporated herein by this reference.  
19

20           22. Defendants have not conducted and/or documented inspections as required by the  
21 General Permit. These inspection requirements and violations are described in detail in section  
22 IV of the Notice Letter, attached hereto as Exhibit 1, and are incorporated herein by this  
23 reference.  
24

25           23. Defendants have violated the reporting requirements of the General Permit. For  
26 example, Defendants have failed to submit annual reports with all of the required elements.  
27

1 These reporting requirements and violations are described in detail in section V of the Notice  
2 Letter, attached hereto as Exhibit 1, and are incorporated herein by this reference.

3 24. Defendants have violated the recordkeeping requirements of the General Permit.  
4 These recordkeeping requirements and violations are described in detail in section VI of the  
5 Notice Letter, attached hereto as Exhibit 1, and are incorporated herein by this reference.  
6

7 25. Defendants have violated the General Permit's prohibition against non-  
8 stormwater discharges. The prohibition and violations are described in detail in section VII of  
9 the Notice Letter, attached hereto as Exhibit 1, and are incorporated herein by this reference.  
10

11 26. Stormwater pollution "is one of the most significant sources of water pollution in  
12 the nation." *Envtl. Def. Ctr., Inc. v. United States Env'tl. Prot. Agency*, 344 F.3d 832, 840 (9th  
13 Cir. 2003). Stormwater pollution from industrial sources is a major source of pollutants that  
14 enter waterways in Washington. The CWA and the General Permit are designed to reduce  
15 pollutants from entering the waters of the state through stormwater. Defendants have discharged  
16 stormwater in violation of the CWA and the General Permit, thereby degrading the environment  
17 and the water quality of the receiving water bodies.  
18

19 27. Defendants' violations are serious because of their frequency and severity.  
20 Defendants have completely failed to fulfill the General Permit's monitoring requirements,  
21 which has obscured whether the facility is complying with CWA requirements, such as water  
22 quality standards, or whether the facility has triggered other obligations under the General  
23 Permit, such as corrective actions. Defendants have consistently failed to implement BMPs, an  
24 adequate SWPPP, and AKART, thereby preventing the facility from controlling the pollutants  
25 from entering its stormwater discharges.  
26  
27  
28

1           28. Defendants' violations were avoidable had Defendants been diligent in overseeing  
2 facility operations and maintenance. WDOE has inspected the facility and informed Defendants  
3 of measures necessary for compliance. Defendants have not implemented all of these measures.

4           29. Defendants have benefited economically as a consequence of their violations and  
5 their failure to implement improvements at the facility.  
6

#### 7                                   **V. CAUSE OF ACTION**

8           30. The preceding paragraphs and the allegations in sections I, II, III, IV, V, VI, VII,  
9 and VIII of the Notice Letter are incorporated herein.  
10

11           31. Defendants have violated their NPDES permit.

12           32. Defendants' violations of the NPDES permit described herein and in the Notice  
13 Letter constitute violations of sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311  
14 and 1342, and violations of "effluent standard(s) or limitation(s)" as defined by section 505, 33  
15 U.S.C. § 1365.  
16

17           33. Defendants' violations of the General Permit and CWA are ongoing as of the  
18 filing date of this Complaint because such violations are continuing and/or are reasonably likely  
19 to recur. Defendants have not taken adequate steps to come into and assure compliance with the  
20 terms and conditions of the General Permit and the CWA. Any and all additional violations of  
21 the General Permit and the CWA which occur after those described in Plaintiff's Notice Letter  
22 but before a final decision in this action should be considered continuing violations subject to  
23 this Complaint.  
24

25           34. Without the imposition of appropriate civil penalties and the issuance of an  
26 injunction, Defendants are likely to continue to violate the General Permit and the CWA to the  
27 further injury of the Plaintiff, its member(s) and others.  
28



35 . A copy of this Complaint is being served upon the Attorney General of the United States and the Administrator of the USEPA as required by 33 U.S.C. § 1365(c)(3).

# **VI. RELIEF REQUESTED**

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

A. Issue a declaratory judgment that Defendants have violated and continue to be in violation of the General Permit and Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342;

B. Enjoin Defendants from operating their facility in a manner that results in further violations of the General Permit or the Clean Water Act;

C. Order Defendants to immediately implement a Storm Water Pollution Prevention Plan that is in compliance with the General Permit, and to provide Plaintiff with a copy of this Plan;

D. Order Defendants to allow Plaintiff to participate in the development and implementation of Defendant's Storm Water Pollution Prevention Plan;

E. Order Defendants to provide Plaintiff, for a period beginning on the date of the Court's Order and running for two years after Defendants achieve compliance with all of the conditions of the General Permit, with copies of all reports and other documents which Defendants submit to the USEPA or to the WDOE regarding Defendants' coverage under the General Permit at the time it is submitted to these authorities;

F. Order Defendants to take specific actions to remediate the environmental harm caused by its violations;

1 G. Order Defendants to pay civil penalties of \$37,500.00 per day of violation for  
2 each violation committed by Defendants pursuant to Sections 309(d) and 505(a) of the CWA, 33  
3 U.S.C. §§ 1319(d) and 1365(a), and 40 C.F.R. § 19;

4 H. Award Plaintiff its litigation expenses, including reasonable attorneys' and expert  
5 witness fees, as authorized by Section 505(d) of the CWA, 33 U.S.C. § 1365(d); and  
6

7 I. Award such other relief as this Court deems appropriate.

8 RESPECTFULLY SUBMITTED this 14th day of June, 2012.

9 **SMITH & LOWNEY, PLLC**

10  
11 By: s/Richard A. Smith  
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## EXHIBIT 1

**SMITH & LOWNEY, P.L.L.C.**

2317 EAST JOHN STREET  
 SEATTLE, WASHINGTON 98112  
 (206) 860-2883, FAX (206) 860-4187

April 13, 2012

**Via Certified Mail - Return Receipt Requested and Personal Service**

Gene L. Huguenin  
 Double H. Slaughtering, Inc. dba The Beef Shop  
 1721 Airport Road  
 Centralia, WA 98531

**Via Certified Mail - Return Receipt Requested and Personal Service**

Managing Agent  
 5-Star Beef  
 1721 Airport Road  
 Centralia, WA 98531

Re: **NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT AND  
 REQUEST FOR COPY OF STORMWATER POLLUTION PREVENTION  
 PLAN**

Dear Managing Agents:

We represent Waste Action Project, P.O. Box 4832, Seattle, WA 98104, (253) 639-7245. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter is to provide you with sixty days notice of Waste Action Project's intent to file a citizen suit against Double H. Slaughtering, Inc. dba The Beef Shop and/or 5-Star Beef (collectively "The Beef Shop") under section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, for the violations described below. This letter is also a request for a copy of the complete and current stormwater pollution prevention plan ("SWPPP") required by The Beef Shop's National Pollution Discharge Elimination System ("NPDES") permit.

The Beef Shop has violated and continues to violate the CWA (see sections 301 and 402 of the CWA, 33 USC §§ 1311 and 1342) and its NPDES Permit No. WAR012015 ("2010 Permit") with respect to operations of, and discharges of stormwater and pollutants to waters of the state from, its facility located at 1721 Airport Road Centralia, WA 98531 (the "facility" or "site") as described herein. The 2010 Permit (the Industrial Stormwater General Permit) was issued by the Washington Department of Ecology ("Ecology") on October 21, 2009, with an effective date of January 1, 2010.

I. Compliance with standards

A. Condition S10.A. of the 2010 Permit prohibits discharges that cause or contribute to violations of water quality standards. Water quality standards are the foundation of the CWA and Washington's efforts to protect clean water. In particular, water quality

standards represent the U.S. Environmental Protection Agency and Ecology's determination, based on scientific studies, of the thresholds at which pollution starts to cause significant adverse effects on fish or other beneficial uses. For each water body in Washington, Ecology designates the "beneficial uses" that must be protected through the adoption of water quality standards.

A discharger must comply with both narrative and numeric criteria water quality standards. WAC 173-201A-010; WAC 173-201A-510 ("No waste discharge permit can be issued that causes or contributes to a violation of water quality criteria, except as provided for in this chapter."). Narrative water quality standards provide legal mandates that supplement the numeric criteria. Furthermore, the narrative water quality standard applies with equal force even if Ecology has established a numeric water quality standard. Specifically, Condition S10.A of the 2010 Permit requires that The Beef Shop's discharges not cause or contribute to an excursion of Washington State water quality standards.

The Beef Shop discharges to the Chehalis River. The Chehalis River does not meet water quality standards for turbidity, fecal coliform, and other pollutants, and is included on the state's "303(d) list" of impaired water bodies. The Beef Shop's discharges contribute to violations of water quality standards in the Chehalis River and have occurred each and every day since January 26, 2010, on which there was 0.1 inch or more of precipitation, and continue to occur. Precipitation data from the Chehalis-Centralia Airport is appended to this notice of intent to sue and identifies these days.

B. Condition S10.C. of the 2010 Permit requires The Beef Shop to apply all known and reasonable methods of prevention, control and treatment ("AKART") to all discharges, including preparation and implementation of an adequate SWPPP and best management practices ("BMPs"). The Beef Shop has violated and continues to violate this condition by failing to apply AKART to its discharges or to implement an adequate SWPPP and BMPs as described below in this notice of intent to sue.

## II. Stormwater Pollution Prevention Plan

A. Condition S3.A.1. of the 2010 Permit requires The Beef Shop to develop and implement a SWPPP as specified. S3.A.2. specifies that the SWPPP must specify BMPs necessary to provide AKART and ensure that discharges do not cause or contribute to violations of water quality standards. For the reasons discussed in sections I.A. and B. of this notice of intent to sue and below, The Beef Shop is in violation of this condition.

B. Condition S3.A.3.a. of the 2010 Permit requires that BMPs in The Beef Shop's SWPPP be consistent with the Stormwater Management Manual for Western Washington (2005 edition) ("SWMMWW"), which is available on the internet at <http://www.ecy.wa.gov/programs/wq/stormwater/manual.html>. Alternatively, the SWPPP must include documentation that the BMPs included therein are demonstratively equivalent to those described in the SWMMWW, including proper selection, implementation and maintenance. The Beef Shop is in violation of Condition S3.A. because it has not prepared and/or is not implementing a SWPPP that is consistent with this manual or that is demonstratively

equivalent thereto, including the housekeeping and other operational BMPs, the structural source control BMPs, and the stormwater treatment BMPs identified in the manual.

C. Condition S3.B. of the 2010 Permit provides specific SWPPP requirements. The Beef Shop is in violation of this condition because its SWPPP does not satisfy these requirements.

i. Condition S3.B.1 of the 2010 Permit requires the SWPPP to include a site map that identifies significant features, the stormwater drainage and discharge structures, the stormwater drainage areas for each stormwater discharge point off-site, a unique identifying number for each discharge point, each sampling location with a unique identifying number, paved areas and buildings, areas of pollutant contact associated with specific industrial activities, conditionally approved non-stormwater discharges, surface water locations, areas of existing and potential soil erosion, vehicle maintenance areas, and lands and waters adjacent to the site that may be helpful in identifying discharge points or drainage routes. The Beef Shop is in violation of Condition S3.B.1 because its SWPPP lacks a site map with all of the requisite information.

ii. Condition S3.B.2 of the 2010 Permit requires the SWPPP to include a facility assessment that includes an inventory of facility activities and equipment at the site, the general layout of the facility including buildings and storage of raw materials, the flow of goods and materials through the facility, regular business hours and seasonal variations in business hours or in industrial activities. The facility assessment must also include an inventory of materials that includes a narrative for each material describing the potential for pollutants to be present in stormwater discharges. The Beef Shop is in violation of Condition S3.B.2 because its SWPPP does not contain a detailed facility assessment as required.

iii. Condition S3.B.4.b. of the 2010 Permit identifies mandatory BMPs that must be included in the SWPPP and implemented, unless The Beef Shop clearly justifies why each omitted mandatory BMP is unnecessary, infeasible, or replaced by alternative and equally effective BMPs. The mandatory BMPs omitted by The Beef Shop in violation of this condition include preventive maintenance BMPs to maintain the stormwater drainage systems, including a schedule or frequency for each maintenance task (S3.B.4.b.3.), having a spill prevention and emergency cleanup plan as specified (S3.B.4.b.i.4.), provisions for employee training, including a training log (S3.B.4.b.i.5.), adequate measures to identify and eliminate the discharge of process wastewater (S3.B.4.b.i.7.), the “applicable” BMPs from the SWMMWW (S3.B.4.b.ii.1.), and location of industrial materials and activities inside or protecting them with storm resistant coverings (S3.B.4.b.ii.2.).

iv. Condition S3.B.5. of the 2010 Permit describes the monitoring plan that must be included in the SWPPP. The Beef Shop is in violation of this condition because it does not have a monitoring plan that includes all the required elements, including identification of all points of discharge and documentation of why each discharge point is not sampled.

### III. Monitoring

A. Condition S4.B.2. of the 2010 Permit requires The Beef Shop to sample quarterly each distinct point of discharge off-site except as otherwise exempt from monitoring as a “substantially identical outfall” per Condition S3.B.5.b. The Beef Shop has violated and continues to violate these conditions because it does not sample each distinct point of discharge off-site. These violations have occurred and continue to occur each and every quarter that The Beef Shop was and is required to sample its stormwater discharges under Conditions S4.A and B of the 2010 Permit, including the quarters in which it collected stormwater discharge samples from some, but not each, point of discharge, and other quarters in which there were discharges that should have been sampled to comply with permit terms but were not. These violations will continue until The Beef Shop commences monitoring all distinct points of discharge.

B. Condition S4.B.3. of the 2010 Permit requires The Beef Shop to record and retain specified information about each stormwater sample taken. The Beef Shop is in violation of this condition because it has not recorded and retained the specified information, including a notation describing if it collected the sample within the first 12 hours of stormwater discharge events and, if not, an explanation why not. These violations occurred in conjunction with each and every stormwater sample collected since January 26, 2010.

C. Condition S4.A. and B. of the 2010 Permit require The Beef Shop to collect stormwater samples no less than once per quarter. Condition S9.A. of the 2010 Permit requires The Beef Shop to report results of analysis of these samples to Ecology on specified forms (Discharge Monitoring Reports, or “DMRs”) on a specified schedule. The Beef Shop has violated these conditions by failing to collect stormwater samples in and/or to submit DMRs for the following monitoring periods: 1st – 4th quarters 2010 and 1st – 4th quarters 2011.

### IV. Inspections

Condition S7.A. of the 2010 Permit requires that The Beef Shop ensure that an inspection of its site by qualified personnel occur every month. Condition S7.B. requires that each such inspection include specified components. Condition S7.C. specifies the records that must be kept for each inspection. The Beef Shop is in violation of these conditions by failing to conduct inspections on the required schedule by qualified personnel. The Beef Shop has not made and recorded the observations at sampling locations for visible characteristics of discharges or for illicit discharges. The Beef Shop has not maintained inspection reports including the requisite information since required to do so under the 2010 Permit.

### V. Reporting violations

Condition S9.B. of the 2010 Permit requires The Beef Shop to submit an accurate and complete annual report to Ecology no later than May 15 of each year. The annual report must include corrective action documentation as required in Condition S8.B – D. If a corrective action is not yet completed at the time of submission of the annual report, The Beef Shop



must describe the status of any outstanding corrective action. Specific information to be included in the annual report is identification of the conditions triggering the need for corrective action, description of the problem and identification of dates discovered, summary of any Level 1, 2, or 3 corrective actions completed during the previous calendar year, including the dates corrective actions completed, and description of the status of any Level 2 or 3 corrective actions triggered during the previous calendar year, including identification of the date The Beef Shop expects to complete corrective actions.

The Beef Shop has violated this condition. The annual report submitted by The Beef Shop for 2010 (in July 2011) does not include the required information. Specifically, the report does not describe all of the stormwater problems identified and the report does not address the facility's failure to monitor its stormwater discharges.

#### VI. Recordkeeping violations

Condition S9.C. of the 2010 Permit requires The Beef Shop to retain certain documents onsite for a minimum of five years, including a copy of the 2010 Permit, a copy of The Beef Shop's permit coverage letter, records of all sampling information specified in Condition S4.B.3, inspection reports, any other documentation of compliance with permit requirements, all equipment calibration records, all BMP maintenance records, all original recordings for continuous sampling instrumentation, copies of all laboratory reports, copies of all reports required by the 2010 Permit and records of all data used to complete The Beef Shop's application for the permit. The Beef Shop has violated this condition by failing to maintain and/or retain the specified records, including DMRs and laboratory data for the quarters identified in section III.C. of this notice of intent to sue.

#### VII. Prohibited Discharges

Condition S5.E. of the 2010 Permit prohibits illicit discharges and the discharge of process wastewater. Appendix 2 of the 2010 Permit defines "illicit discharges" to include "any *discharge* that is not composed entirely of *stormwater*." Appendix 2 of the 2010 Permit defines stormwater as "that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility." In contrast to stormwater, Appendix 2 of the 2010 Permit defines leachate as "water or other liquid that has percolated through raw material, product, or waste and contains substances in solution or suspension as a result of the contact with these materials," and process wastewater as "any water which, during manufacturing or processing, comes into direct contact or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product."

All non-stormwater discharges from the Beef Shop's operations, including discharges of wastewater, animal waste, or liquefied manure, generated in or around the slaughterhouse and/or barn, are violations of the 2010 Permit. During a December 10, 2008 inspection of The Beef Shop, an inspector with the Department of Ecology noted that a drain from the facility was located next to the Chehalis River. Illicit discharges from this pipe, manure piles,

depressions, or outfalls on the property are violations of Condition S5.E. of the 2010 Permit. These violations have occurred every day from January 26, 2010, through the present.

#### VIII. Request for SWPPP

Pursuant to Condition S9.F. of the 2010 Permit, Waste Action Project hereby requests that The Beef Shop provide a copy of, or access to, its SWPPP complete with all incorporated plans, monitoring reports, checklists, and training and inspection logs. The copy of the SWPPP and any other communications about this request should be directed to the undersigned at the letterhead address.

Should The Beef Shop fail to provide the requested complete copy of, or access to, its SWPPP as required by Condition S9.F of the Permit, it will be in violation of that condition, which violation shall also be subject to this notice of intent to sue and any ensuing lawsuit.

#### Conclusion

The above-described violations reflect those indicated by the information currently available to Waste Action Project. These violations are ongoing. Waste Action Project intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

Under Section 309(d) of the CWA, 33 USC § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$32,500 per day for each violation before and through January 12, 2009 and up to \$37,500 per day for each violation thereafter. In addition to civil penalties, Waste Action Project will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

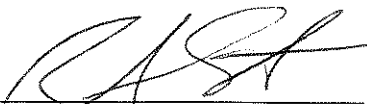
Waste Action Project believes that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Double H. Slaughtering, Inc. dba The Beef Shop and/or 5-Star Beef (collectively "The Beef Shop") under Section 505(a) of the Clean Water Act for violations.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations addressed in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed promptly. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.



Very truly yours,

**SMITH & LOWNEY, PLLC**

By:   
Richard A. Smith

cc: Lisa Jackson, Administrator, U.S. EPA  
Dennis McLerran, Region 10 Administrator, U.S. EPA  
Ted Sturdevant, Director, Washington Department of Ecology  
Gene L. Huguenin, Registered Agent, 2211 Huntington Loop SE, Olympia, WA  
98513

<u>Date</u>	<u>Precip (in.)</u>	<u>Event</u>	<u>Date</u>	<u>Precip (in.)</u>	<u>Event</u>	<u>Date</u>	<u>Precip (in.)</u>	<u>Event</u>
2010	Precip. (in)	Events	14	0	Fog	2	0	Rain
Jan	sum		15	0		3	0.36	Rain
26	0.06	Fog , Rain	16	0.04	Rain	4	0.37	Rain
27	0.01	Fog	17	0.03	Fog , Rain	5	0.07	Fog , Rain
28	0		18	0	Fog	6	0.01	
29	0.02	Rain	19	0		7	0	Fog
30	0.2	Rain	20	0		8	0	Fog
31	0.01	Rain	21	0.11	Rain	9	0	Fog
2010	Precip. (in)	Events	22	0.06	Rain	10	0.08	Rain
Feb	sum		23	0	Fog	11	0	
1	0.15	Fog , Rain	24	0		12	0	
2	0		25	0.23	Rain	13	0	Fog
3	0.09	Rain	26	0.13	Rain	14	0	
4	0.12	Rain	27	0		15	0	
5	0.03	Rain	28	0.07	Rain	16	0	
6	0.01	Fog , Rain	29	0	Rain	17	0	Rain
7	0	Fog	30	0.37	Rain	18	0.23	Rain
8	0.01	Fog	31	0.06	Rain	19	0.19	Rain
9	0	Fog	2010	Precip. (in)	Events	20	0.27	Rain
10	0.09	Fog , Rain	Apr	sum		21	0.02	Rain
11	0.03	Rain	1	0.01	Rain	22	0.18	Rain
12	0.5	Rain	2	0.54	Rain	23	0.04	Rain
13	0.07	Rain	3	0.12	Rain	24	0	Fog
14	0.16	Fog , Rain	4	0.08	Rain	25	0.19	Rain
15	0.04	Fog , Rain	5	0.06	Rain	26	0.23	Rain
16	0.09	Rain	6	0.24	Rain	27	0	Fog , Rain
17	0		7	0	Rain	28	0.19	Rain
18	0	Fog	8	0.1	Rain	29	0.07	Rain
19	0.03	Fog	9	0.18	Rain	30	0.02	Rain
20	0	Fog	10	0		31	0.2	Rain
21	0	Fog	11	0.1	Rain	2010	Precip. (in)	Events
22	0		12	0.21	Rain	Jun	sum	
23	0.16	Rain	13	0.02	Rain	1	0.07	Rain
24	0.13	Rain	14	0	Fog	2	0.3	Rain
25	0.05	Rain	15	0.02	Rain	3	0	Fog
26	0.36	Rain	16	0		4	0.17	Rain
27	0.07	Rain	17	0		5	0	Fog
28	0	Fog	18	0		6	0.37	Rain
2010	Precip. (in)	Events	19	0.01	Rain	7	0	
Mar	sum		20	0.04	Rain	8	0	Fog
1	0.01	Fog	21	0		9	0.43	Rain
2	0.03	Fog , Rain	22	0		10	0.19	Rain
3	0.01	Fog	23	0.02	Rain	11	0.01	
4	0		24	0.08	Rain	12	0	
5	0		25	0		13	0	
6	0	Fog	26	0.11	Rain	14	0	
7	0.02	Rain	27	0.05	Rain	15	0.05	Rain
8	0	Rain	28	0.15	Rain	16	0.01	Rain
9	0.07	Rain	29	0.03	Rain	17	0	
10	0	Rain	30	0	Rain	18	0	
11	0.35	Rain	2010	Precip. (in)	Events	19	0.52	Rain
12	0.44	Rain	May	sum		20	0	Rain
13	0.03	Rain	1	0.04	Rain	21	0	Rain

Date	Precip (in.)	Event	Date	Precip (in.)	Event	Date	Precip (in.)	Event
22	0.01	Fog	10	0		30	0	
23	0		11	0	Fog	2010	Precip. (in)	Events
24	0		12	0		Oct	sum	
25	0		13	0		1	0	Fog
26	0		14	0		2	0	
27	0		15	0		3	0	Rain
28	0		16	0		4	0.01	Fog , Rain
29	0		17	0	Fog	5	0	Fog
30	0		18	0		6	0	Fog
2010	Precip. (in)	Events	19	0.01		7	0	Fog
Jul	sum		20	0		8	0	
1	0.11	Rain	21	0		9	0.34	Rain
2	0.01	Rain	22	0		10	0.41	Rain
3	0		23	0		11	0	
4	0	Rain	24	0		12	0	Fog
5	0		25	0		13	0	Fog
6	0		26	0		14	0.02	Fog , Rain
7	0		27	0		15	0	Fog
8	0		28	0	Fog	16	0	
9	0		29	0		17	0	Fog
10	0		30	0.04	Rain	18	0	Fog
11	0		31	0.31	Rain	19	0	Fog
12	0	Rain	2010	Precip. (in)	Events	20	0	Fog
13	0		Sep	sum		21	0.01	Fog
14	0		1	0.09	Rain	22	0.03	Rain
15	0		2	0	Fog	23	0.05	Rain
16	0		3	0	Rain	24	0.57	Rain
17	0		4	0		25	0.79	Rain
18	0		5	0		26	1.14	Rain
19	0		6	0.08	Rain	27	0.02	Rain
20	0		7	0.03	Rain	28	0.12	Rain
21	0		8	0.03	Rain	29	0	
22	0		9	0		30	0.05	Fog , Rain
23	0		10	0.01	Rain	31	0.04	Rain
24	0		11	0	Fog	2010	Precip. (in)	Events
25	0		12	0		Nov	sum	
26	0		13	0	Fog	1	1.19	Rain
27	0		14	0	Fog	2	0	Fog
28	0		15	0.09	Fog , Rain	3	0	Fog
29	0		16	0.25	Rain	4	0	Fog
30	0		17	0.03	Fog , Rain	5	0.03	Rain
31	0		18	0.44	Fog , Rain	6	0.1	Rain
2010	Precip. (in)	Events	19	0.46	Rain	7	0.02	Rain
Aug	sum		20	0.21	Rain	8	0.01	Rain
1	0		21	0.01	Fog	9	0.28	Rain
2	0		22	0		10	0	Fog
3	0		23	0.08	Rain	11	0.09	Fog , Rain
4	0		24	0		12	0.01	Fog
5	0		25	0	Fog , Rain	13	0.06	Rain
6	0	Rain	26	0.07	Rain	14	0	
7	0.1	Rain	27	0		15	0	Rain
8	0	Rain	28	0	Rain	16	0.06	Rain
9	0		29	0		17	0.41	Rain

Date	Precip (in.)	Event	Date	Precip (in.)	Event	Date	Precip (in.)	Event
18	0.3	Rain	6	0.18	Rain	24	0.1	Rain , Snow
19	0.22	Rain	7	0.28	Rain	25	0.01	Fog
20	0.12	Rain	8	0.07	Rain	26	0	
21	0.07	Rain , Snow	9	0.06	Rain	27	0.33	Rain
22	0.17	Rain , Snow	10	0.01	Rain , Snow	28	0.69	Rain , Snow
23	0		11	0	Fog , Rain , Snow	2011	Precip. (in)	Events
24	0	Rain , Snow	12	0.84	Rain	Mar	sum	
25	0	Rain	13	0.35	Rain	1	0.36	Fog , Rain , Snow
26	0.07	Rain	14	0.08	Rain	2	0.17	Fog , Rain
27	0.03	Fog , Rain	15	0.55	Rain	3	0.17	Rain
28	0	Fog , Rain	16	0.67	Rain	4	0.11	Fog , Rain
29	0.03	Rain	17	0.02	Rain	5	0.01	Fog , Rain
30	0.13	Rain	18	0.10	Rain	6	0	Fog
2010	Precip. (in)	Events	19	0	Fog	7	0.01	
Dec	sum		20	0.02	Fog , Rain	8	0.02	Rain
1	0.02	Fog , Rain	21	0.23	Rain	9	0.78	Rain
2	0.01	Fog	22	0		10	0.54	Rain
3	0.05	Rain	23	0.05	Rain	11	0	
4	0		24	0.03	Rain	12	0.08	Rain
5	0		25	0.02	Fog , Rain	13	0.26	Rain
6	0	Rain	26	0.01	Fog	14	0.32	Rain
7	0.21	Rain	2011	Precip. (in)	Events	15	0.36	Rain
8	0.4	Rain	Jan	sum		16	0.69	Rain
9	0.84	Rain	27	0.01	Fog	17	0.01	Rain
10	0.05	Rain	28	0	Rain	18	0.02	Rain
11	0.82	Rain	29	0.05	Rain	19	0	
12	0.52	Rain	30	0.04	Fog , Rain	20	0.06	Fog , Rain
13	0.14	Fog , Rain	31	0	Rain	21	0.06	Rain
14	0.18	Rain	2011	Precip. (in)	Events	22	0	Rain
15	0.02	Rain	Feb	sum		23	0	Fog
16	0.02	Fog , Rain	1	0		24	0.06	Fog , Rain
17	0	Fog	2	0	Fog	25	0	Fog , Rain
18	0		3	0		26	0.13	Rain
19	0		4	0.16	Rain	27	0.09	Rain
20	0	Rain	5	0.04	Rain	28	0.02	Rain
21	0.03	Rain	6	0.11	Rain	29	0.08	Rain
22	0		7	0.15	Rain	30	0.2	Rain
23	0.07	Rain	8	0		31	0.16	Rain
24	0.1	Rain	9	0	Fog	2011	Precip. (in)	Events
25	0.13	Rain	10	0	Fog	Apr	sum	
26	0.43	Rain	11	0		1	0	Rain
27	0.32	Rain	12	0.18	Rain	2	0.11	Rain
28	0.11	Rain	13	0.04	Rain	3	0.02	Rain
29	0	Rain	14	0.26	Rain	4	0.58	Rain
30	0	Fog	15	0.12	Rain	5	0.06	Rain
31	0		16	0.01	Rain	6	0.18	Rain
2011	Precip. (in)	Events	17	0.01	Rain	7	0	Fog
Jan	sum		18	0.08	Rain , Snow	8	0	Fog
1	0		19	0	Fog	9	0	
2	0		20	0		10	0.06	Rain
3	0	Fog	21	0	Rain	11	0.07	Rain
4	0.02	Rain	22	0.18	Rain	12	0	Fog
5	0.27	Rain	23	0.23	Rain , Snow	13	0.04	Rain

<u>Date</u>	<u>Precip (in.)</u>	<u>Event</u>	<u>Date</u>	<u>Precip (in.)</u>	<u>Event</u>	<u>Date</u>	<u>Precip (in.)</u>	<u>Event</u>
14	0.5	Rain	2	0	Rain	23	0	Fog
15	0.25	Rain	3	0		24	0	
16	0	Rain	4	0		25	0	
17	0.01	Rain	5	0		26	0	Rain
18	0.21	Rain	6	0		27	0	
19	0.02	Rain	7	0	Rain	28	0	
20	0	Fog	8	0		29	0	
21	0	Rain	9	0		30	0	
22	0		10	0		31	0	
23	0	Fog	11	0		2011	Precip. (in)	Events
24	0.12	Rain	12	0	Rain	Aug	sum	
25	0.4	Rain	13	0	Rain	1	0	
26	0.03	Rain	14	0		2	0	
27	0.2	Rain	15	0		3	0	
28	0.06	Rain	16	0		4	0	
29	0	Rain	17	0	Fog	5	0	
30	0		18	0.21	Rain	6	0	Rain
2011	Precip. (in)	Events	19	0		7	0	
May	sum		20	0		8	0	
1	0	Fog	21	0	Fog	9	0	
2	0.04	Rain	22	0		10	0	
3	0.04	Rain	23	0.03	Rain	11	0	
4	0	Fog	24	0.04	Rain	12	0	Fog
5	0.08	Rain	25	0	Fog	13	0	
6	0.15	Rain	26	0	Fog	14	0	Rain
7	0.06	Rain	27	0	Rain	15	0	
8	0.03	Rain	28	0.09	Rain	16	0	Fog
9	0.01		29	0.09	Rain	17	0	Fog
10	0.02		30	0.01	Rain	18	0	
11	0.02	Rain	2011	Precip. (in)	Events	19	0	Fog
12	0.02	Fog, Rain	Jul	sum		20	0	
13	0.02	Fog	1	0	Fog	21	0	
14	0.04	Rain	2	0		22	0.01	Rain
15	0.05	Rain	3	0		23	0	Rain
16	0.31	Rain	4	0		24	0	Fog
17	0.07	Fog	5	0		25	0	
18	0.04		6	0		26	0	
19	0.02		7	0		27	0	Fog
20	0.02		8	0.01		28	0	
21	0.02	Rain	9	0		29	0	
22	0.01		10	0		30	0	
23	0.01	Rain	11	0.1	Rain	31	0	
24	0	Fog	12	0.08	Rain	2011	Precip. (in)	Events
25	0	Rain	13	0.15	Rain	Sep	sum	
26	0	Rain	14	0	Rain	1	0	Fog
27	0	Rain	15	0	Rain	2	0	
28	0.01	Rain	16	0.37	Rain	3	0	
29	0		17	0.02	Fog, Rain	4	0	
30	0.01		18	0	Fog	5	0	
31	0	Rain	19	0		6	0	Fog
2011	Precip. (in)	Events	20	0		7	0	
Jun	sum		21	0.04	Rain	8	0	
1	0.01	Rain	22	0		9	0	

Date	Precip (in.)	Event	Date	Precip (in.)	Event	Date	Precip (in.)	Event
10	0		31	0.01	Rain	19	0	Fog
11	0		2011	Precip. (in)	Events	20	0	Rain
12	0		Nov	sum		21	0.01	Fog
13	0		1	0	Fog	22	0	Fog
14	0		2	0.12	Fog , Rain	23	0	
15	0		3	0.06	Rain	24	0	
16	0		4	0	Fog	25	0.17	Rain
17	0.21	Rain	5	0	Fog	26	0.02	Rain
18	0.06	Rain	6	0.01	Fog	27	0.36	Rain
19	0.01	Fog	7	0	Fog , Rain	28	0.77	Rain
20	0	Fog	8	0		29	0.58	Rain
21	0		9	0.11	Fog	30	0.15	Rain
22	0		10	0	Fog	31	0.01	Fog , Rain
23	0	Fog , Rain	11	0.2	Rain	2012	Precip. (in)	Events
24	0	Rain	12	0.21	Rain	Jan	sum	
25	0.12	Rain	13	0.15	Rain	1	0	Rain
26	0.17	Rain	14	0.06	Rain	2	0.14	Fog , Rain
27	0.1	Rain	15	0	Fog	3	0	Rain
28	0	Fog	16	0.12	Fog , Rain	4	0.16	Rain
29	0	Fog	17	0.41	Rain	5	0.01	Fog , Rain
30	0	Rain	18	0.15	Rain	6	0.06	Fog , Rain
2011	Precip. (in)	Events	19	0.1	Fog , Rain	7	0.01	
Oct	sum		20	0	Fog	8	0	
1	0		21	0.29	Rain	9	0.01	
2	0	Rain	22	1.65	Rain	10	0	Rain
3	0.07	Rain	23	0.72	Rain	11	0.01	
4	0.13	Rain	24	0.2	Rain	12	0	
5	0.01	Rain	25	0.05	Rain	13	0	Fog
6	0.02	Rain	26	0		14	0.16	Rain
7	0.06	Rain	27	0.39	Rain	15	0.06	Fog , Rain
8	0		28	0.01	Fog	16	0.06	Fog , Rain
9	0.07	Rain	29	0	Fog , Rain	17	0.25	Rain
10	0.15	Rain	30	0.01		18	0.17	Rain
11	0.58	Rain	2011	Precip. (in)	Events	19	0.47	Rain
12	0.03	Rain	Dec	sum		20	0.38	Rain
13	0	Fog	1	0.01	Fog	21	0.22	Rain
14	0.01	Rain	2	0	Fog	22	0.21	Rain
15	0		3	0	Fog	23	0	Fog
16	0		4	0	Fog	24	0.39	Rain
17	0	Fog	5	0	Fog	25	0.13	Rain
18	0		6	0	Fog	26	0.13	Rain
19	0	Fog	7	0.01		27	0	Fog
20	0.02	Rain	8	0	Fog	28	0	
21	0.08	Fog , Rain	9	0	Fog	2012	Precip. (in)	Events
22	0.29	Rain	10	0		Jan	sum	
23	0.01	Fog	11	0	Fog , Rain	29	0.48	Rain
24	0.01	Fog	12	0.01	Fog	30	0.03	Rain
25	0	Fog	13	0	Fog	31	0.04	Rain
26	0	Fog , Rain	14	0.04	Fog , Rain	2012	Precip. (in)	Events
27	0	Fog	15	0.07	Rain	Feb	sum	
28	0.16	Rain	16	0	Fog	1	0.08	Rain
29	0.01	Fog , Rain	17	0.01	Fog	2	0	
30	0.05	Rain	18	0.05	Fog , Rain	3	0	Fog

<u>Date</u>	<u>Precip (in.)</u>	<u>Event</u>	<u>Date</u>	<u>Precip (in.)</u>	<u>Event</u>	<u>Date</u>	<u>Precip (in.)</u>	<u>Event</u>
4	0.00	Fog	2012	Precip. (in)	Events	23	0	Fog
5	0.00	Fog	Mar	sum		24	0	
6	0.00	Fog	1	0.14	Fog , Rain	25	0	Fog
7	0.00	Rain	2	0.01		26	0	
8	0.05	Rain	3	0.03	Rain	27	0.11	Rain
9	1.14	Fog , Rain	4	0.00		28	0.17	Rain
10	0.08	Fog , Rain	5	0.26	Rain	29	0.01	Rain
11	0.04	Rain	2012	Precip. (in)	Events	30	0.13	Fog , Rain
12	0.14	Rain	Mar	sum		31	0.34	Rain
13	0.07	Rain	6	0.03		2012	Precip. (in)	Events
14	0.17	Rain	7	0	Rain	Apr	sum	
15	0.00		8	0		1	0.07	Rain
16	0.12	Rain	9	0		2	0.04	
17	0.18	Rain	10	0.09	Rain	3	0.13	Rain
18	0.59	Rain	11	0.15	Rain	4	0.01	Fog , Rain
19	0.01	Rain	12	0.33	Rain	5	0.02	Rain
20	0.04	Rain	13	0.3	Rain	6	0.06	Fog , Rain
21	0.27	Rain	14	0.35	Rain	7	0	Fog
22	0.45	Rain	15	0.75	Rain	8	0	
23	0.01	Rain	16	0.22	Rain	9	0	
24	0.11	Rain	17	0.12	Rain	10	0.07	Rain
25	0.48	Rain	18	0.08	Rain	11	0.23	Rain
26	0.08	Rain	19	0		12	0.11	Fog , Rain
27	0.02		20	0.42	Rain	13	0.01	Fog
28	0.15	Rain	21	0				
29	0.79	Rain	22	0.01	Rain			